

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to commence consideration of the various regulatory)	
reviews associated with CONSUMERS ENERGY)	
COMPANY's decision to terminate early its)	
power purchase agreement with Entergy Nuclear)	Case No. U-18218
Palisades, LLC, a subsidiary of Entergy Corporation,)	
for the output of electric power from the Palisades)	
Nuclear Power Plant.)	
_____)	

At the March 28, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On December 8, 2016, Consumers Energy Company (Consumers) announced that it reached an agreement with Entergy Corporation (Entergy) for early termination of a power purchase agreement (PPA) whereby Consumers purchases electricity generated by the Palisades Nuclear Power Plant (Palisades) from Entergy Nuclear Palisades, LLC (ENP), a subsidiary of Entergy.

On December 20, 2016, the Commission opened this docket to facilitate the process of receiving initial information from Consumers regarding the PPA buyout, replacement power, and other plans (December 20 order). On January 6, 2017, Consumers filed a response to the December 20 order.

On January 20, 2017, the Commission issued a further order delineating issues that would need to be addressed in a subsequent filing by Consumers, such as an application for a financing order, in order for the Commission to be able to appropriately evaluate the plan (January 20 order). At the conclusion of the January 20 order, the Commission closed this docket.

On February 21, 2017, the Residential Customer Group (RCG) filed a motion for reconsideration, rehearing, clarification, and to re-open this proceeding, and a petition to intervene. On March 13, 2017, Consumers filed a response in opposition to the motion.

In its motion, the RCG contends that the Commission “inexplicably closed the docket and investigation” in the January 20 order without turning this proceeding into a contested case. Motion, p. 4. The RCG maintains that “continuation of said docket with participation of affected customers would be reasonable and prudent.” *Id.* The RCG states that ENP should be added as a party. The RCG urges the Commission to issue a notice of hearing, allow for intervention, and proceed to a formal contested case.

In response, Consumers argues that the RCG does not have standing to seek rehearing or reopening because it is not a party to this proceeding. Consumers notes that the Commission has held that only a party to a proceeding may seek reopening or rehearing pursuant to the Commission’s rules, Mich Admin Code, R 792.10436 (Rule 436) and 792.10437 (Rule 437); and that MCL 24.287 provides that rehearing may be granted on the request of a party. Consumers points out that Rule 437 assumes that only a party may seek rehearing where it provides that only a “party” may file an answer, and that Rule 436 specifically refers to parties. Consumers contends that the RCG has made no attempt to comply with Rule 437, because the RCG has not alleged any of the required conditions for granting rehearing.

Consumers also points out that on February 10, 2017, the company filed an application for a financing order in Case No. U-18250 – a case related to the termination of the Palisades PPA – and that the RCG was granted intervention in that matter on March 9, 2017; and that the RCG is already an intervenor in Case No. U-18142, the other case that was captioned with the instant case. Consumers contends that the record in this proceeding cannot, in any case, be reopened because there is no record. Finally, Consumers avers that the RCG’s petition to intervene is untimely because the case is already closed.

Rule 436(2) provides for reopening “upon motion of any party.” Rule 437(1) provides that any petition for rehearing must be served “on all other parties.” And MCL 24.287(1) provides that “An agency may order a rehearing in a contested case on its own motion or on request of a party.” The Commission has ruled many times that only a party to a proceeding may seek reopening or rehearing. September 25, 2012 order in Case No. U-16568, p. 3; August 21, 2007 order in Case No. U-14882 *et al*, p. 3; May 15, 2001 order in Case No. U-12334, pp. 2-3. The RCG is not a party to this proceeding and thus its motion is denied. This ruling is dispositive and so the RCG’s petition to intervene is moot.

The Commission notes that it has broad powers to commence investigations in a wide variety of areas of utility regulation. *See*, MCL 460.1 *et seq.*, MCL 460.51 *et seq.*, and MCL 460.551 *et seq.* Investigations are not typically contested cases, though they may be. “A contested case proceeding shall be held when required by statute and may be held when the commission so directs.” Mich Admin Code, R 792.10415(1). No statute required this proceeding to be a contested case proceeding. This proceeding was investigatory and informational; it has served its purpose and the docket remains closed.

THEREFORE, IT IS ORDERED that the motion for rehearing and reopening filed by the Residential Customer Group is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

By its action of March 28, 2017.

Norman J. Saari, Commissioner

Kavita Kale, Executive Secretary

Rachael A. Eubanks, Commissioner